

IN THE HIGH COURT OF ORISSA AT CUTTACK

F.A.O. No.268 of 2021

(In the matter of an Appeal under Section 30 of the Employees' Compensation Act, 1923)

The Divisional Manager, New India Assurance Co. Ltd., Badambadi, Cuttack. ***Appellant***

-versus-

Geetarani Rout and others ***Respondents***

Appeared in this case:-

For Appellant : Mr. V. Narasingh,
Mr. S. Das &
Ms. S. Devi

For Respondent No.1 : Mr. P.K. Mishra,

For Respondent No.4 : None

CORAM:
JUSTICE A.K. MOHAPATRA

JUDGMENT

Date of Hearing : 19.01.2022 | Date of Delivery :27.01.2022

A.K. Mohapatra, J.

1. The present appeal has been preferred by the insurer under Section 30 of the Employees' Compensation Act, 1923, assailing the judgment and award dated 15.09.2021 passed by the Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack in E.C. Case No.356-D of 2015.

2. Though the Appeal was listed for admission, on consent of both the sides, the same is being taken up for final hearing and disposal.

3. The factual backdrop of the case, in short, is that the predecessor in interest of the claimant family, namely one Sahadev Rout died due to an accident, which took place on 31.08.2015 near Chhend, Rourkela and eventually the said Sahadev Rout, workman succumbed to the injuries at S.C.B. Medical College and Hospital, Cuttack. Since the incident has arisen out of and in course of his employment, the members of the deceased family, such as, his wife and children have filed a claim case under the provision of Employees Compensation Act, 1923 before the Commissioner for Employees Compensation-cum-Joint Labour Commissioner, Cuttack claiming compensation to the tune of Rs.10,00,000/-.

4. It is alleged in the claim application that while the deceased was working as a driver in Tata Ace bearing Registration No.OD-05-3446 belonging to the respondent no.1, he met with an accident on 31.08.2015. Initially the deceased was shifted to ISPAT General Hospital and thereafter he was shifted to S.C.B. Medical College and Hospital, Cuttack for treatment. During his treatment, he died at S.C.B. Medical College and Hospital, Cuttack, as a result of which,

an U.D. F.I.R. case was registered under the Malgodown Police Station, Cuttack, bearing U.D.F.I.R. Case No.1293 of 2015. Pursuant to such U.D. F.I.R., post-mortem examination of the dead body was conducted.

5. In their claim application, the claimants have stated that the deceased was getting Rs.10,000/- per month towards his wage and that at the time of the accident, the deceased was aged about 36 years.

6. The Commissioner for Employees Compensation-cum-Joint Labour Commissioner, Cuttack after taking evidence and hearing the counsel for the parties decided the E.C. Case No.356-D of 2015 by judgment dated 15.09.2021, wherein learned trial court has allowed the claim application of the Applicants in part on contest against Respondent No.2 and directed the Present Appellant to deposit the compensation amount of Rs.12,71,206/- before that court within a period of thirty days from the date of order, failing which, the Appellant shall be liable to pay 50% penalty along with interest @12% on the awarded amount.

7. Challenging the impugned judgment and award passed by the court below, the present Appellant-Insurance Company has preferred this Appeal before this court. Apart from the other

grounds taken in the Appeal Memo, the Appellant has taken a ground challenging the fixation of income of the deceased and the quantum of compensation determined by the Court below.

8. Heard Mr. V. Narasingh, learned counsel for the Appellant and Mr. P.K. Mishra, learned counsel appearing for the Respondent No.1. Perused the case records.

9. Mr.V.Narsingh, learned counsel appearing for the Appellant submits that the court below has committed an illegality by passing the impugned award and thereby saddling the entire liability on the Insurer of the offending vehicle. He further submits that in the absence of any documentary evidence relating to wage of the deceased, the finding arrived at by the court below in that regard are based on guess work and on surmises and conjectures and as such the final award has been passed without following the due procedure of law.

10. It is further submitted by the learned counsel for the Appellant that the court below has committed a gross illegality by not considering the notification of the Labour and Employment Department, Govt. of Odisha with regard to the Minimum Wage of a labourer although the same is a statutory document issued under the Minimum Wages Act. Further the fixation of the wages of the

deceased at the time of his accidental death is not in accordance with aforesaid notification issued under the Minimum Wage Act, inasmuch as, fixing the quantum of wage of the deceased workman at Rs.8,000/- per month is not in conformity with the Notification as the same provides monthly wages @ Rs.6,600/- per annum (i.e. @ Rs.220/- per day for a semi-skilled labourer). Therefore, the entire basis of the calculation of the wages of the deceased is improper and the same is on the higher side and as such the quantum of compensation finally arrived at by the learned court below is unsustainable in law.

11. Mr.P.K. Mishra, learned counsel appearing for the Claimant-Respondent No.1 does not dispute the aforesaid Notification of the Government of Odisha by the Labour and Employment Department. He further submits that the learned court below has not committed any illegality by granting the compensation as has been given under the impugned award. He also submits that it is difficult to produce evidence with regard to income of the deceased as he was working as a driver in a Tata Ace van on being employed by a private employer. He further contends that the income would be more than what has been assessed by the learned court below.

12. Having heard the learned counsel for the parties and upon perusal of the records, this Court is of the considered view that the quantum of wages at the rate of Rs.8,000/- per month by the court below appears to be not based on any evidence on record and not in conformity with the aforesaid Notification of the Govt. However in absence of any specific material to establish the income of the deceased, the courts are duty bound to rely upon the statutorily fixed wages/salary/income like the notification issued by the Government notifying the minimum wages for a semi-skilled workers. Further, this has been an accepted practice by the courts dealing in such types of matters. Therefore, this Court is also inclined to accept the notification of the government with regard to minimum wage payable to a semi-skilled worker. Having accepted the aforesaid facts, this Court is of the view that the order of the court below is erroneous to that extent and the same needs to be modified.

13. In such view of the matter, this court is inclined to allow the appeal partly and further directs that the judgment and award dated 15.09.2021 passed in E.C. Case No.356-D of 2015 is modified to the extent that the earning of the deceased be calculated by taking his income to be Rs.6,600/- per month (as per the statutory

Notification) and accordingly the penalty and interest as levied in the impugned award are set aside. The Appellant is directed to pay a consolidated sum of Rs.6,50,000/- (Rupees Six lakhs Fifty thousand) to the claimants with proportionate accrued interest from out of the awarded amount deposited in the court below. The balance amount deposited in the court below along with proportionate accrued interest thereon shall be returned to the Appellant-Insurance Company.

14. With the aforesaid observation, the appeal is partly allowed. However, there shall be no order as to cost.

15. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(A.K. Mohapatra)
Judge